



POLICE DEPARTMENT

April 11, 2014

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Roman Goris
Tax Registry No. 947042
Patrol Borough Brooklyn North Specialized Units
Disciplinary Case No. 2013-9648

The above-named member of the Department appeared before the Court on December 4, 2013, January 17, 2014, and January 28, 2014, charged with the following:

1. Said Police Officer Roman Goris, on or about December 23, 2011, at approximately 22:29 hours, while assigned to the 77th Precinct and on duty, in the vicinity of [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he questioned Yahnick Martin, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 1 STOP AND FRISK

2. Said Police Officer Roman Goris, on or about December 23, 2011, at approximately 22:29 hours, while assigned to the 77th Precinct and on duty, in the vicinity of [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he frisked Yahnick Martin, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 – STOP AND FRISK

3. Said Police Officer Roman Goris, on or about December 23, 2011, at approximately 22:29 hours, while assigned to the 77th Precinct and on duty, in the vicinity of [REDACTED] Kings County, abused his authority as a member of the New York City Police Department, in that he searched Yahnick Martin, without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 3 – STOP AND FRISK

The Civilian Complaint Review Board (CCRB) was represented by Nicole S. Junior, Esq.
Respondent was represented by John Tynan, Esq., Worth, Longworth & London LLP.

Respondent, through his counsel, entered a plea of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Respondent is found Not Guilty of Specification No. 1. He is found Guilty of Specification Nos. 2 & 3.

SUMMARY OF EVIDENCE PRESENTED

The CCRB's Case

The Department called Yahnick Martin and Patricia Hollins.

Yahnick Martin

Martin was a licensed real estate agent and a graduate of Presbyterian College in South Carolina. On December 23, 2011, he and his wife were preparing to go away for Christmas. Before leaving, they had to drop off gifts at their friend's house on [REDACTED] in Brooklyn. It was about 2215 hours when Martin parked his car on [REDACTED] while his wife went inside the building to drop off the gifts (see CCRB Exhibit [CCRBX] 2, photograph of location).

While he waited outside, Martin decided to smoke a Black & Mild cigar. The cigar was approximately six inches long and had a filter tip (see CCRBX 1, exemplar). Within moments of Martin lighting the cigar, a marked police van parked across the street from Martin's vehicle.

Respondent and Police Officers Deven Okvist and Peter Behan exited the van. Okvist and Behan approached a sport utility vehicle (SUV) double-parked next to the police van while

Respondent approached Martin. Okvist and Behan told the occupants to lower the window because they smelled marijuana. One of the female occupants responded, “[N]o, no, you don’t.”

Martin testified that Respondent asked him what he was smoking. Martin replied that it was a Black & Mild cigar. Martin even took “a pull of my cigar and bl[e]w smoke up into the air” to prove it. Respondent, however, asked Martin to put his hands up. Martin refused, saying, “What do I have to put my hands up for?”

Respondent reached for his handcuffs and said, “[Y]ou know, you are not going to put your hands up.” Afraid that he might get arrested, Martin obliged. While Martin’s hands were up, Respondent patted his arms, shoulders, abdomen, jacket and pants pockets, waistband and upper thigh. Respondent also placed his hands inside Martin’s pockets. Martin protested this search but Respondent “basically ignored” him. Respondent removed Martin’s lighter and wallet from his pants pocket. Respondent “lift[ed] up the cards and thump[ed] through it” and handed the wallet back.

As Respondent started to walk across the street to the SUV, Martin exclaimed, “[Y]ou’re not supposed to be in my pockets so where is the hundred dollars that you took out of my pocket.” Martin explained at trial that he made this false accusation of corruption because he wanted to get Respondent’s attention and him to acknowledge the search. Respondent turned to Martin and said, “I make more money and I don’t need your hundred.”

Martin testified that an occupant of the SUV advised Martin to take down Respondent’s name and shield number. But as soon as Martin asked Respondent for this information, he turned around, walked toward him, and said, “[O]h, you want to make accusations? So you’re going to jail.” Respondent placed Martin under arrest even though Martin indicated to the officers that he was not being serious.

Martin was taken to the precinct where he was issued two summonses, one for disorderly conduct and the other for obstruction of traffic. Martin asserted that during the course of this incident, no crowds had formed and there was no vehicular traffic. Martin also noted that his vehicle was stolen because the ignition still was on when he was taken to the precinct. He admitted that he filed a lawsuit against the Department. He missed getting home for Christmas and family members died after that holiday. He suffered "personal injury," including post-traumatic stress disorder.

On cross examination, Martin maintained that he did not smell marijuana on the night of the incident. Respondent was "a couple of feet" away from Martin when Respondent asked him what he was smoking. Respondent continued to walk toward him until he was at arm's length. Martin testified that he was smoking the cigar with his left hand. He did not know whether his right hand was inside his pocket. Martin denied stepping back or turning his body away when Respondent approached him.

Martin admitted that he was suing the Department for \$20 million. He was in the station house for about an hour. Martin claimed that he missed weeks of work because of the incident. He conceded that he did not seek medical attention on the day of the incident but "made some phone calls" the next day.

Patricia Hollins

Hollins was a resident of [REDACTED] and had lived there for 40 years. Hollins testified that on December 23, 2011, at about 2215 hours, she was in a SUV with her niece, [REDACTED] double-parked on [REDACTED] [REDACTED] was driving and Hollins was in the passenger seat. They were waiting for a parking space.

Hollins stated that a police van parked in front of them. Three officers exited the police van and two (i.e., Okvist and Behan) approached the SUV. One of the officers asked Hollins to lower the window and asked her what she was doing there and what she was smoking. Hollins told the officer that she lived there and that neither she nor [REDACTED] smoked. She told them that they were waiting for a spot.

Hollins testified that another vehicle was parked across the street next to a fire hydrant. Hollins stated that the third officer (i.e., Respondent) approached a man (i.e., Martin) while Martin was in a vehicle. Respondent spoke and Martin exited the vehicle. Respondent patted down Martin's midsection and pants pockets. He also searched him, by entering the jacket and pants pockets.

Hollins noted that Martin probably "made a mistake." He claimed that his money was missing. Hollins advised him to get the officer's name and shield number before the officers, who were getting back in the van, left. One of the officers "became kind of irate." Hollins indicated that that officer said to Martin, "[O]h, you are making an accusation on a police officer. Now your ass is getting locked up."

Hollins contended that Martin did not block traffic because there was no traffic. No crowds had formed and Hollins did not observe anyone looking out of apartment windows.

Respondent's Case

Respondent called Police Officers Deven Okvist and Peter Behan as witnesses. He also testified on his own behalf.

Police Officer Deven Okvist

On December 23, 2011, Okvist, a five-year member of the Department, was assigned to the conditions team with Respondent and Behan. Respondent was operating their police van while Okvist sat in the passenger seat and Behan in the rear seat. At about 2230 hours, they were in the vicinity of [REDACTED] when Okvist noticed a man (i.e., Martin) standing next to a double-parked car. He also smelled a "very strong" odor of marijuana. Okvist was trained in the identification and field testing of marijuana.

Okvist and Behan approached a double-parked SUV while Respondent approached Martin's car. When Okvist and Behan determined that the odor of marijuana was not coming from the SUV, Behan went across the street to assist Respondent. Okvist returned to their van, with Respondent and Behan following five to ten seconds later.

When all three officers were in the van, Martin went in front of the van and started "[s]creaming about a hundred dollars." The officers told Martin to move away and tried to drive around him "multiple times," but Martin "kept side stepping, so we couldn't go around." This lasted for about a minute, after which Martin was placed in handcuffs.

Upon questioning by the Court, Okvist stated that Martin was taken into custody for disorderly conduct, to wit: blocking vehicular traffic. Behan issued him a summons at the precinct.

Police Officer Peter Behan

Behan, a five-year member of the Department, was working with Respondent and Okvist on the night of the incident in question. While working on the conditions team in the vicinity of [REDACTED], Behan smelled marijuana in the air. Behan continued to smell marijuana when

he exited the police van. Okvist and Behan approached an SUV. Okvist signaled to him that the odor was not coming from the SUV. Behan then went to assist Respondent across the street.

As Behan approached Respondent, he observed that an individual (i.e., Martin) had his right hand in his pocket and was retreating toward the sidewalk from the curb. Respondent told Martin to stop and take his hand out of his pocket. Respondent was holding Martin's right hand. Respondent removed Martin's right hand out from his pocket and then patted the pocket.

Behan testified that Respondent told Behan that Martin did not have anything in his hand that could harm him or Behan. Respondent took Martin's pedigree information to prepare a Stop, Question and Frisk Report Worksheet (UF-250).

Behan testified that he and Respondent returned to the police van. Martin approached them and "inquir[ed] about a hundred dollars." Respondent told Martin that he did not take his money and went inside the van. Martin then stood in front of the van and refused to move. Behan asked Martin to move "more than three times," but Martin refused and said, "I am not leaving until I get my hundred dollars." He was screaming. People were looking out from their windows and passersby stopped. Some people egged him on, saying, "[O]h, they took your hundred dollars, that's not right."

Respondent placed Martin in handcuffs. A summons was not issued to Martin at the scene because the officers "didn't feel like it was a safe time to sit there and write a summons." Martin was issued two summonses and released from the precinct in less than one hour. Martin said that he was joking about the \$100.

On cross examination, Behan testified that he approached the SUV because the odor of marijuana was more concentrated there. When he was certain that the odor did not emanate from the SUV, he walked across the street to assist Respondent. He continued to smell marijuana in

the air. Behan found threatening Martin's actions of blading his body, retreating, and refusing to remove his hand from his pocket when asked multiple times by Respondent, who was investigating criminal activity. Behan agreed that marijuana was not recovered from the scene.

Behan said that he obtained Martin's identification card and a UF-250 was prepared.

Behan stated that the summons for blocking vehicular traffic was predicated upon Martin blocking the movement of the police van.

Respondent

Respondent, a five-year member of the Department, currently was assigned to the anticrime unit in Patrol Borough Brooklyn North. He previously was assigned to the conditions team in the 77 Precinct. He was trained in the recognition of marijuana by its odor and packaging.

On December 23, 2011, Respondent worked with Okvist and Behan. He indicated that they were in uniform. Respondent testified that it was his practice to keep his window down to increase his observability of the patrol area. During patrol, he smelled a "strong odor" of marijuana in the vicinity of [REDACTED]. Respondent stopped the vehicle. He noticed a double parked SUV to the right and a person (i.e., Martin) standing to the left. The officers exited the van and Respondent walked toward Martin. Okvist and Behan walked toward the SUV.

Respondent testified that as he walked toward Martin, he noticed he was smoking a cigar and standing next to a vehicle. Respondent instructed Martin to show his hands but Martin did not respond. About a car length away from Martin, Respondent reinstructed him. Martin "turned around, his body was bladed to me, left hand in my direction, right hand in his pocket

away from me, legs spread apart and knees slightly bent like a fighting posture.” In addition, Martin “failed to follow simple directions.” This caused Respondent to walk faster and grab Martin’s right hand. Respondent continued to smell marijuana while he was near Martin.

When Respondent grabbed Martin’s hand, Martin tried to keep his hand inside his pocket. Respondent pulled Martin’s hand out of his pocket within seconds. Martin did not have anything in his hand. Respondent then frisked Martin’s right pocket and felt “hard objects.” He removed these to ensure that Martin did not possess any weapons. Respondent returned the items and took down Martin’s pedigree information.

Respondent testified that as he walked away from Martin, Martin accused Respondent of taking \$100 from him. Respondent kept walking because Martin’s allegation was not true. But after Martin continued to pester him, Respondent turned and said, “I make enough money. I don’t need to take money out of [your] pocket.” Respondent re-entered the driver seat of the van. Martin walked in front of the van and continued to scream and curse about the \$100. Respondent turned the steering wheel left and right so that Martin would step away from the front of the van. Martin instead stepped where the van was turning in order to prevent it from moving.

Respondent exited the van and warned Martin to move. When Martin asked about the \$100 again, Respondent arrested him for disorderly conduct. After Martin was placed in handcuffs, he told Respondent that he was joking about the money.

Respondent admitted that he and Behan returned to the [REDACTED] location because they had to take a report for a stolen vehicle.

On cross examination, Respondent agreed that when he first arrived on [REDACTED], he could not identify the source of the marijuana odor. Respondent observed Martin walk

toward the back of his vehicle as the van slowly drove down the block. Respondent testified that in his experience, many people put the filter tip of a Black & Mild cigar on a marijuana cigar to make it appear as a mere tobacco cigar.

Respondent agreed, nonetheless, that before he frisked Martin, he determined that he was smoking a Black & Mild and not a marijuana cigar. He determined this once he was within arm's length.

Respondent agreed that he could not see whether there was a bulge underneath Martin's hand while Martin's hand was inside his pocket. He was unable to see whether Martin had a weapon in his hand. Respondent indicated that before he frisked Martin, he did not see any bulges on Martin's jacket or pants pockets, or chest or waist. Respondent stated, however, that he felt a bulge in Martin's pocket after Martin removed his hand from his pocket. Respondent agreed that the bulge felt like a square object, but even once Respondent placed his hand into Martin's pocket, he did not know what it was. He agreed that the square object was not sharp or a barrel of a firearm. Respondent later learned that it was a lighter and a wallet.

Upon examination by the Court, Respondent testified that he realized the odor of marijuana did not emanate from Martin while he held Martin's right hand. Respondent agreed that he frisked Martin after he removed his hand from his pocket. Respondent held Martin's hand while he frisked the other parts of Martin's clothing and body.

On re-direct examination, Respondent explained that from the time he realized the odor of marijuana did not emanate from Martin to the time he frisked him, "I was already in the process of pulling his hand out and frisk. Everything happened at the same time pretty much." He testified that it all happened in less than 15 seconds.

On re-cross examination, Respondent agreed that he frisked the other areas of Martin's body after he removed the wallet and lighter from his pocket.

FINDINGS AND ANALYSIS

On the evening of December 23, 2011, Yahnick Martin was at the side of his car on [REDACTED] in Brooklyn, preparing to go away for Christmas. He was smoking a Black & Mild cigar (see CCRBX 1, exemplar and photograph). This was a factory-issued tobacco cigar, but there was testimony that Black & Milds could be consistent with marijuana use as well.

Respondent and two other members of the 77 Precinct conditions team were patrolling [REDACTED] in a marked van and in uniform. Though it was December, they had the windows down to look out for criminal conditions. They asserted that they smelled marijuana and stopped the van. Martin and the other prosecution witness denied smelling marijuana.

The officers exited the van. The other two approached a double parked vehicle on their side of the street. Respondent crossed the street and approached Martin. Martin asserted that Respondent asked him, "What are you smoking?" and "Put your hands up." Respondent denied asking him any question per se but agreed that he told Martin to show his hands.

The first specification charges Respondent with questioning Martin without sufficient legal authority. Counsel for the CCRB stated that the two utterances alleged by Martin constituted the allegedly unlawful questioning.

The fact that Respondent asked the question, "What are you smoking?" is evidence that the scent of marijuana was present. Burning marijuana has a distinctive and strong odor. One can smell it on the street, look around, and still not figure out where it is coming from. If

Respondent merely had seen Martin smoking a cigar, but not smelled marijuana, his question would have made little sense because it would have been evident that it was not marijuana.

Respondent's question was legitimate. The odor of marijuana and Martin smoking a cigar gave rise to a founded suspicion that criminality was afoot, allowing Respondent the common-law right of inquiry under Step II of the street encounters analysis set forth in People v. De Bour, 40 N.Y.2d 210 (1976). See People v. Brock, 107 A.D.3d 1025, 1027 (3d Dept.) (very strong odor of marijuana from vehicle and defendant's false answer that he was heading home from school provided founded suspicion that criminality was afoot, allowing questions focused on wrongdoing), lv. denied, 21 N.Y.3d 1072 (2013); People v. Bazzey, 2007 N.Y. Misc. Lexis 3344, **5-6, 841 N.Y.S.2d 220, 15 Misc. 3d 1133(A) (1st Dist., Suffolk County 2007) (strong odor of marijuana from defendant and his vehicle provided founded suspicion and permitted "more intrusive and pointed questioning").

Respondent's alleged statement of "Put your hands up" or "Show me your hands" is not really a "question," it is an order or instruction. In any event, it is valid practice for safety purposes for the police to instruct a suspect to keep his hands visible.

As Respondent did not abuse his authority in questioning Martin, he is found Not Guilty of Specification No. 1.

The second specification alleges that Respondent abused his authority by wrongfully frisking Martin. Martin asserted that when Respondent asked him, "What are you smoking?," he indicated that it only was a tobacco cigar. Martin showed the cigar to Respondent and exhaled it so that the officer could smell it only was tobacco. Nevertheless, Respondent frisked several of Martin's pockets. He also entered a pocket with his hand and removed items.

Viewing Respondent's somewhat equivocal testimony in a light most favorable to him, he testified that he only realized Martin merely was smoking a tobacco cigar when he already had removed Martin's hand from his pocket and begun frisking him. Respondent conceded, however, that he continued frisking Martin's pockets even after he realized the Black & Mild contained only tobacco. Respondent felt a hard, rectangular object in one of the pockets. He removed this and found it to be Martin's wallet.

Reasonable suspicion is required for a frisk, even when the stop is justified. That suspicion can be unparticularized if the stop is for a violent crime, like robbery. Here, however, where there was a "lawful detentive stop," see People v. Cantor, 36 N.Y.2d 106, 114 (1975), to investigate the possible possession of marijuana in a public place, Respondent needed an independent, reasonable belief of immediate danger to himself in order to frisk Martin. See Legal Bureau Bulletin, Vol. 1, No. 3, p. 3 (Mar. 31, 1971); People v. Mack, 26 N.Y.2d 311, 317 (1970); Patrol Guide § 212-11 (2). A simple pocket bulge is insufficient, and in any event, Respondent did not perceive the bulge to be a weapon. Moreover, Respondent frisked Martin's other pockets and provided no additional reason for this. In light of Respondent's testimony that Martin otherwise was compliant during the frisk, it is difficult to credit Respondent's testimony that Respondent's unremarkable posture of having one hand in his pocket, the other holding a cigar, and his body turned at an angle constituted a "fighting posture." As such, Respondent is found Guilty of Specification No. 2.

The third specification charges Respondent with searching Martin without sufficient legal authority. Because the frisk was improper, it follows that the search also was improper. Nothing material about the situation had changed. As noted, Respondent did not perceive the right pocket

bulge to be a weapon. It thus was impermissible for him to search it. See Patrol Guide § 212-11

(3). Thus, Respondent is found Guilty of Specification No. 3.

It should be noted that although this tribunal does not require police officers to be experts on the common law of search and seizure, Respondent's actions in this case were of such a nature that any reasonable officer would know they were not permitted.

It also should be noted that other issues outside the scope of the charges were presented at trial, including the alleged failure to safeguard prisoner property and wrongful issuance of a summons. These were not and could not be considered other than to the extent they reflected on witness credibility.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See Matter of Pell v. Board of Educ., 34 N.Y.2d 222, 240 (1974). Respondent was appointed to the Department on July 8, 2008. Information from his personnel folder that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent also submitted a package of documents pertaining to penalty. These included his honorary discharge from the military and various medals, commendations and awards from his military career.

Respondent has been found Guilty of wrongfully frisking and searching Yahnick Martin during a street stop. The initial stop itself was justified because the odor of marijuana on the street and Martin smoking a cigar in that area gave Respondent founded suspicion to stop Martin and ask him questions. Respondent, however, had no justification to frisk and search Martin, as he had no particularized suspicion to do so.

CCRB counsel suggested a penalty of 15 vacation days. Respondent has been found Not Guilty of one of the three specifications, though. Moreover, a penalty more along the lines of 10 vacation days is more standard for a case like this, see, e.g., Case No. 76549/00 (Dec. 11, 2001). The Court also has considered that there is no evidence that Respondent's goal in stopping Martin and engaging in the other conduct related to the stop was anything other than to interdict possible criminal activity. Finally, in light of Respondent's record with the Department and his significant military service to the nation, the Court recommends that Respondent forfeit 8 vacation days as a penalty.

Respectfully submitted,



David S. Weisel
Assistant Deputy Commissioner Trials

APPROVED

JUN 17 2014

WILLIAM J. BRATTON
POLICE COMMISSIONER

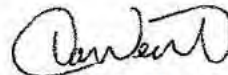
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER ROMAN GORIS
TAX REGISTRY NO. 947042
DISCIPLINARY CASE NO. 2013-9648

Respondent's last three annual evaluations were as follows: Respondent received an overall rating of 4.0 "Highly Competent" in 2013, a 4.5 "Highly/Extremely Competent" in 2012, and a 4.5 "Highly/Extremely Competent" in 2011. [REDACTED]

[REDACTED]. He has no prior formal disciplinary record.

For your consideration.



David S. Weisel
Assistant Deputy Commissioner Trials